

# **BDCP CWA 404 Coordination Meeting Notes**

## **December 1, 2011**

### Attendees:

DWR – Chuck Gardner, Sue Ramos, Praba Pirabarooban, Wendy Hall, Cassandra Enos, Russ Stein, Marc Ebbin

ICF – Ken Bogdan, Mike Avina

USACE – Mike Nepstad

EPA – Tom Hagler, Erin Forseman

### **1. Introduction**

- Reviewed minutes from last meeting.
  - EPA has minor comments and will provide revisions.

### **2. EIR/EIS Range of Alternatives**

- ICF provided an overview of Chapter 3 (Alternatives). Chapter 3 has two parts, the chapter itself and the appendix (pending) that will describe the alternatives development process. There was discussion regarding the range of alternatives included in the current version of the EIR/S.
  - EPA: will the appendix describe how BDCP was selected as opposed to options to the program, such as retiring farmland? We need to be sure the operations are broad enough to include a reasonable range.
  - ICF – The alternatives include the NMFS alternative (alt 7) which provides the maximum benefit to fish species, as well as the SWRCB alternative (alt8) which meets needs for ‘beneficial uses’.
  - ICF: some of this detail will be in the appendix to Chapter 3; some will be in BDCP itself.
  - Counsel: the range of alternatives is best framed by the purpose of BDCP, which is to get federal ESA and state NCCP Act permits.
  - For 404, the project purpose is implementation of BDCP, with the relevant goals of the program being reliable supply, conservation, and permits.
  - There is overlap/distinction between alternatives for EIR/EIS vs. 404.
  - DWR noted that some of the alternatives are changing—Alternative 8, for example, increases Delta outflow per request from State Board.
    - This alternative also reflects NGO letters—suggesting the use of upstream reservoirs to increase Delta outflow.
    - Some modeling data will be available for BECT meeting next week that puts detail on this alternative.

- ICF opened the discussion to questions as to alternatives:
  - EPA noted that more detail on operations is necessary.
  - DWR commented: the range of operational differences between the alternatives is large—but more detail is coming on how the modeling was performed and how the operational differences practically play out.
  - EPA/Corps: the effect of operational changes on 404 regulated features must be made clear—this set of facts in turn helps determine the adequacy of the range of alternatives for EPA/Corps decision points and review.
  - Counsel: This issue is best examined in the regional 404(b)(1) alternative analysis, not the NEPA document.
  - ICF: keep in mind that in order to say the range is sufficient for 404 for NEPA the impacts identified in other chapters must be included.
  - EPA: yes—w/out seeing impacts, we can't issue permit—this is the most important checkpoint. The earlier the permitting strategy rolls up into the NEPA document the better. When someone opens the EIS to see the impacts of the permitted activity, they need to be easily discernible. This could be in an appendix so that it can be identifiable—broken out by permits.
  - Counsel: this is a critical point, the document covers multiple projects, and these multiple projects need to be easily discernible—i.e. projects associated with conveyance. The scope of document is still limited to restoration at program level, conveyance at project level—there will be multiple subsequent/supplemental documents and associated permits tiered from this.
  - DWR: does this discussion indicate a need for additional meetings to resolve these issues?
    - Corps/EPA: yes, we should also bring the other federal agencies in. EPA brings up issues that other fed agencies have not seen purpose statement for 404.
    - Counsel: keep in mind that the statutory framework for 404 decisions is limited to EPA/Corps.
    - EPA: MOU provides for CWA integration with the larger NEPA process for other federal agency decisions, including ESA Section 7 consultation.
  - Counsel: every action described in Chapter 4 will be covered by ESA 7, and will not require new Section 7 consultation.

3. **WRDA 214 Agreement Update:** Corps comments: revisions are in progress clarifying that after money is provided to Corps regulatory under the MOU, it can be distributed to other Corps departments. The Corps is also removing language referring to “initial projects” because this is vague—Corps counsel wants it either out or defined.
  - a. **EPA Review of Purpose and Need Statement:** EPA provides the update that the P/N statement has been provided to the EPA NEPA review office; EPA anticipates a response soon. Pending their response, EPA will provide a checkpoint letter if there is agreement on the P/N statement.

**4. Next Meeting:**

- a. December 22, 2011 (tentative)